

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

IN RE: NATIONAL PRESCRIPTION)	MDL No. 2804
OPIATE LITIGATION)	
)	Case No.:1:17-md-2804
THIS EDOCUMENT RELATES TO:)	
)	Hon. Daniel A. Polster
2:21-cv-00757)	

**DEFENDANT UNION SERV-U PHARMACY, INC.'S MOTION
TO DISMISS FOR FAILURE TO PROSECUTE**

On April 6, 2023, this Court issued its “Order Regarding Failures to Submit Plaintiff Fact Sheets” (the “Order”). (Dkt. 4985). The Order required that “all government subdivision plaintiffs who have not submitted a PFS into the PFS Repository must do so within 45 days of the date of this order [May 22, 2023], or have their cases dismissed with prejudice.” (*Id.*, p. 6 (emphasis in original)). Plaintiff the City of Wauwatosa is a government subdivision¹ and has not submitted a Plaintiff Fact Sheet (“PFS”) related to this matter at any time to date, whether prior-to, during or since the expiration of the 45-day period set by the Order. Defendant Union Serv-U Pharmacy, Inc. therefore moves the Court, pursuant to the Order and Federal Rule of Civil Procedure 41(b), to dismiss these cases with prejudice for failure to prosecute.

The Court established its Fact Sheet Implementation Order for the MDL on June 19, 2018, and required all non-Track One “Plaintiffs that are Governmental Entities (e.g., Cities, Towns, Counties),” as well as all “Defendants not named in a Track One trial case” to complete a PFS and serve it “on Liaison Counsel via email.” (Dkt. 638). Plaintiff the City of Wauwatosa filed its case on or about May 18, 2021, and it was transferred to this Court in October of 2021. Defendant

¹ The Order specifically defines “government plaintiffs” to include “city-and county-type governmental subdivisions plaintiffs.” (*Id.*, p. 2, n. 3.)

Union Serv-U Pharmacy did not receive a PFS from Plaintiff at any time between the October 2021 transfer to this Court and the date of the Order.

Both the Order's scope and its requirements are unambiguous. It gave "all governmental subdivision plaintiffs" – a group that includes the City of Wauwatosa - "one last opportunity to correct [their] deficiency by "submit[ting] a complete PFS into the PFS Repository." (Dkt. 4985, p. 1.) The deadline to submit a complete PFS into the PFS Repository was "within 45 days of the date of this Order," or May 22, 2023. (*Id.*) Plaintiff did not submit any PFS, complete or otherwise, into the PFS Repository on or before May 22, 2023, nor has it submitted any PFS to the PFS Repository since that time.

The consequences for failure to submit a PFS are similarly unambiguous. Any governmental subdivision plaintiff "who fail[s] to comply with this Order will have [its] case ***dismissed with prejudice*** for failure to prosecute, pursuant to Fed. R. Civ. P. 41(b)." (*Id.* (emphasis in original)). The Order empowers "any defendant – including Union Serv-U Pharmacy, Inc. – to "move for dismissal with prejudice of any case filed by a plaintiff that fails to comply with this Order. (*Id.*, p. 7.) Plaintiff has failed to comply with the Order and thus failed to timely prosecute their claims in their respective cases. *See generally Id.*; *see also, e.g., Harmon v. CSX Transp. Inc.*, 110 F.3d 364, 365-67 (6th Cir.1997)(noting district courts' authority to dismiss cases sua sponte for failure to prosecute and affirming dismissal with prejudice). Union Serv-U Pharmacy Inc. therefore moves the Court to dismiss these respective cases with prejudice and pursuant to the Order and Federal Rule of Civil Procedure 41(b) for failure to prosecute.

Respectfully submitted,

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/s/ Paul D. Motz

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing was filed electronically this 18th day of July, 2023.
Notice of this filing will be sent to all parties by operation of the Court's electronic filing system.
Parties may access this filing through the Court's system.

/s/ Maria A. Rito-Foukas
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